

#350

MMB

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Student Doe 1 by and through his
Parents/Guardians Does 1 and 2

and

Student Doe 2 by and through her
Parent/Guardian Doe 3

and

Student Does 3 and 4 by and through their
Parent/Guardian Doe 4

and

Student Doe 5 by and through his
Parent/Guardian Doe 5

and

Student Doe 6 by and through his
Parents/Guardians Does 6 and 7

and

Student Doe 7 by and through his
Parent/Guardian Doe 8

and

Student Does 8 and 9 by and through their
Parents/Guardians Does 9 and 10¹

Plaintiffs

V.

Civil Action No.

09 2095

¹ Students Doe and Parents/Guardians Doe's true names and addresses do not appear in this pleading pursuant to Rule 5.2 of the Federal Rules of Civil Procedure and Rule 5.1.3 of the Rules of Civil Procedure of the United States District Court for the Eastern District of Pennsylvania. Said information will be made available to this Honorable Court upon request.

The School District of Lower Merion :
301 East Montgomery Avenue :
Ardmore, Pennsylvania 19003 :
:
Defendant :

COMPLAINT

Plaintiffs, by and through their undersigned counsel, now file the present Civil Rights Action in order to contest the final redistricting plan adopted by the School District of Lower Merion on January 12, 2009, and to request that this Honorable Court enjoin said government action. In support of their claims, plaintiffs aver the following:

Parties

1. Plaintiffs, Parent/Guardian Does 1 and 2, are the parents and/or guardians of Student Doe 1.

2. Plaintiff, Parent/Guardian Doe 3, is the parent and/or guardian of Student Doe 2.

3. Plaintiff, Parent/Guardian Doe 4, is the parent and/or guardian of Student Does 3 and 4.

4. Plaintiff, Parent/Guardian Doe 5, is the parent and/or guardian of Student Doe 5.

5. Plaintiffs, Parent/Guardian Does 6 and 7, are the parents and/or guardians of Student Doe 6.

6. Plaintiff, Parent/Guardian Doe 8, is the parent and/or guardian of Student Doe 7.

7. Plaintiffs, Parent/Guardian Does 9 and 10, are the parents and/or guardians of Student Does 8 and 9.

8. All of the above noted plaintiffs live in a neighborhood bounded by Athens Avenue, Wynnewood Road, County Line Road, and Cricket Avenue in South Ardmore, Pennsylvania.

9. All of the parties identified as “Student Doe” attend either an elementary school or middle school in the School District of Lower Merion.

10. All of the parties identified as “Student Doe” are minority students, and the South Ardmore neighborhood in which they live is the only neighborhood in Lower Merion which has a significant African American population.

11. Defendant, School District of Lower Merion, hereinafter referred to as “Lower Merion,” is located in Montgomery County, Pennsylvania, and its administrative offices are located at 301 East Montgomery Avenue in Ardmore, Pennsylvania.

12. Lower Merion is the entity charged with the legal responsibility to provide, among other things, both regular and special education services to school age children residing in Lower Merion Township and Narberth Borough.

13. Lower Merion is run by the duly elected Lower Merion School Board which consists of nine (9) School Board Members.

14. These School Board Members are chosen in at large elections in Lower Merion Township and Narberth Borough.

15. None of the sitting School Board Members reside in the neighborhood where Students Doe reside.

Jurisdiction

16. This Honorable Court has jurisdiction over the claims set forth herein pursuant to 28 U.S.C. Section 1331.

Facts Common to All Counts

17. Lower Merion operates six (6) elementary schools (i.e. Belmont Hills Elementary School, Cynwyd Elementary School, Gladwyne Elementary School, Merion Elementary School, Penn Valley Elementary School, and Penn Wynne Elementary School), two (2) middle schools (i.e. Bala Cynwyd Middle School and Welsh Valley Middle School), and two (2) high schools (i.e. Lower Merion High School and Harriton High School).

18. Despite the fact that numerous children in Lower Merion attend a “neighborhood school” for either elementary school or middle school, Students Doe do not attend a “neighborhood school” for either elementary or middle school because there is no such school in their neighborhood. Students Doe’s only “neighborhood school” is Lower Merion High School which is located less than one (1) mile from their homes.

19. Lower Merion is not at the present time, nor has it ever been, subject to a busing decree entered by any Federal and/or State Court.

20. Lower Merion has received in the past, and continues to receive, ongoing Federal Funding.

21. As the final stage of its Capital Improvement Program that began in 1997, Lower Merion decided to rebuild both Lower Merion High School and Harriton High School.

22. Lower Merion formed the Community Advisory Committee in January 2004 in order to assist it in determining whether its two (2) high schools would be built to house approximately the same number of students, or whether the two (2) high schools would be built to house their current student populations. According to Lower Merion’s

statistics, Lower Merion High School presently houses one thousand five hundred and sixty (1,560) students while Harriton High School presently houses eight hundred and seventy five (875) students.

23. In its report dated May 24, 2004, the Community Advisory Committee advised Lower Merion that it recommended that Lower Merion High School and Harriton High School be built to house approximately the same number of students.

24. Lower Merion subsequently adopted the Community Advisory Committee's recommendation in 2004.

25. Lower Merion's actions in 2004 set the stage for the present busing dispute. When Lower Merion decided to change the size of its existing high schools, it became necessary to redistrict students away from Lower Merion High School, and to then direct them to Harriton High School. It is the manner in which Students Doe were selected to attend, and then mandated to attend Harriton High School, which is at the very heart of this litigation.

26. Throughout the redistricting process, "race" issues have been of paramount concern.

27. Lower Merion started the redistricting process in March of 2008.

28. According to its records, Lower Merion adopted a multi-step process in order to devise, to deliberate on, and then to adopt a redistricting plan.

29. Lower Merion apparently conducted initial internal, non-public meetings in April 2008 about redistricting. Documents obtained pursuant to a Pennsylvania Right to Know Request indicate that "race" played a part in redistricting. Specifically, in a document titled Redistricting Recommendations dated April 18, 2008, "The distribution

of minority students” is listed as an item “that must be addressed before a redistricting plan can be established.” A true and correct copy of the aforementioned document is appended hereto as Exhibit “A.”

30. At its April 28, 2008, School Board Meeting, the Lower Merion School Board adopted guidelines which it termed “non-negotiables.” The School Board took the position that any redistricting plan presented and/or adopted would have to comply with these guidelines.

31. These adopted guidelines were:

(a). The enrollment of the two (2) high schools and two (2) middle schools would be equalized;

(b). Elementary students would be assigned so that the schools would be at or under the school capacity;

(c). The plan would not increase the number of buses required;

(d). At a minimum, the class of 2010 would have the choice to either follow the redistricting plan or stay at the high school of their previous year; and

(e). Redistricting decisions would be based upon current and expected future needs, and not based upon past redistricting outcomes, or perceived past promises or agreements.

32. Lower Merion then allegedly sought to engage the community at large by conducting focus group meetings during May and June 2008. The purpose of these meetings was purportedly to identify “community values” that would assist in the formation of a final redistricting plan.

33. Focus group meetings were conducted under the direction of a private contractor named URS on May 29, 2008, June 8, 2008, June 9, 2008, June 10, 2008, and on June 19, 2008. In addition, feedback was also collected from the community via online surveys during this period.

34. During each of the aforementioned focus group meetings, the participants identified the lack of diversity as a concern in Lower Merion's schools.

35. URS subsequently reported its findings to the Lower Merion School Board in a report dated July 11, 2008.

36. According to URS' report, exploring and cultivating "whatever diversity-ethnic, social, economic, religious and racial-there is in Lower Merion," was a value based principle that arose in the focus group meetings.

37. While the aforementioned focus group meetings were taking place in May and June of 2008, Lower Merion hired a consultant, Ross Haber Associates, Inc., in June of 2008 to assist it in identifying demographic trends that would be used in drafting a redistricting plan.

38. According to Ross Haber's contract with Lower Merion, Lower Merion was to provide Ross Haber with a six (6) year enrollment history. The contract goes on to state that "This data should include not only enrollment, but also information regarding ethnicity and socio-economic status." A true and correct copy of the June 25, 2008 contract between Ross Haber and Lower Merion is appended hereto as Exhibit "B."

39. Under the terms of the aforementioned contract, Ross Haber was to provide to Lower Merion, among other things, "[e]nrollment trends based upon ethnicity," as well as "[e]nrollment trends based upon socio-economic factors."

40. In addition to identifying demographic trends within the district, Lower Merion also retained Mr. Haber to assist it in drafting the redistricting plan.

41. Using the information acquired from the May-June 2008 focus group meetings, and the Lower Merion School District's non-negotiable guidelines, as well as the demographic information from Ross Haber, Lower Merion and Ross Haber went about drafting Lower Merion's Redistricting Plan in the Summer of 2008.

42. Lower Merion's First Redistricting Plan was presented at the Lower Merion School Board Meeting on September 8, 2008.

43. Although the First Redistricting Plan did not change the existing school placements for Students Doe, it drastically changed the racial make-up of Lower Merion High School and Harriton High School.

44. The First Redistricting Plan achieved the changes at the high school level by altering school feeder patterns at the middle school level. According to the proposed plan, The Penn Valley Elementary School Community was redistricted from Welsh Valley Middle School to Bala Cynwyd Middle School, and then to Lower Merion High School. The Penn Wynne Elementary School Community was redistricted from Bala Cynwyd Middle School to Welsh Valley Middle School, and then onto Harriton High School.²

45. Lower Merion prominently displayed its "diverse" high school student populations during the course of its slide show presentation on its First Redistricting Plan. Lower Merion proudly displayed this data in order to affirm that it was honoring the community value of diversity. A true and correct copy of the relevant portion of the slide show is appended hereto as Exhibit "C."

² The proposed map for the First Redistricting Plan can be accessed via the internet at http://www.lmsd.org/documents/redistricting/map_proposed.pdf.

46. Public comment was then permitted on the First Redistricting Plan.

47. Thereafter, Lower Merion presented its Second Redistricting Plan at the Lower Merion School Board Meeting on October 20, 2008.

48. Although the Second Redistricting Plan also did not change the existing school placements for Students Doe, it again drastically changed the racial make-up of Lower Merion High School and Harriton High School.

49. The Second Redistricting Plan achieved changes at the high school level by changing attendance patterns at the middle school level. Under the Second Plan, all children attending Belmont Hills Elementary School and Gladwyne Elementary School would attend Welsh Valley Middle School, and then Harriton High School. Those children attending Penn Valley Elementary School that lived in the Penn Valley area, and that lived in the Haverford area, would also attend Welsh Valley Middle School, and then Harriton High School. Those children attending Penn Wynne Elementary School that lived in the Wynnewood area bounded by East Lancaster Avenue and Ballytore Avenue to Ballytore Circle would also attend Welsh Valley Middle School, and then Harriton High School. Those children attending Penn Wynne Elementary School that lived in the South Ardmore area bounded by Cricket Avenue, Wyoming Avenue, and Lancaster Avenue to County Line Road would also attend Welsh Valley Middle School, and then Harriton High School. Those children attending Merion Elementary School that lived in the area bounded by East Lancaster Road, East Wynnewood Avenue, the North side of Rockland Road, and Merion Road to East Montgomery Avenue would also attend Welsh Valley Middle School, and then Harriton High School. All children attending Cynwyd Elementary School would attend Bala Cynwyd Middle School, and then Lower Merion

High School. Those children attending Penn Wynne Elementary School that did not live in the Wynnewood area identified above would attend Bala Cynwyd Middle School, and then Lower Merion High School. Those children attending Merion Elementary School that did not live in the area identified above would attend Bala Cynwyd Middle School, and then Lower Merion High School. Those children attending Penn Valley Elementary School that did not live in the Penn Valley and Haverford areas identified above, and those students living in the Lower Merion High School Walk Zone would attend Bala Cynwyd Middle School, and then have a choice to attend either Lower Merion High School or Harriton High School. Those children attending Belmont Hills Elementary School living in the Lower Merion High School Walk Zone would attend Welsh Valley Middle School, and then have a choice of attending either Lower Merion High School or Harriton High School.³

50. Lower Merion once again prominently displayed its “more diverse” high school student populations during the course of its slide show presentation on its Second Redistricting Plan. A true and correct copy of the relevant portion of the slide show is appended hereto as Exhibit “D.”

51. Public comment was then permitted on the Second Redistricting Plan.

52. Thereafter, Lower Merion presented its Third Redistricting Plan at the Lower Merion School Board Meeting on November 24, 2008.

53. Like the previous plans, the Third Redistricting Plan once again drastically changed the racial make-up of Lower Merion High School and Harriton High School.

³ The proposed map for the Second Redistricting Plan can be accessed via the internet at http://www.lmsd.org/documents/redistricting/map_proposed2.pdf.

Unlike the previous plans, the school placements for Students Doe changed in that they no longer had a choice to attend Lower Merion High School or Harriton High School.

54. Despite contending vehemently during the early phases of the redistricting process that it could not present a workable 3-1-1 model (i.e. three designated elementary schools feeding a single middle school which would in turn feed one high school), Lower Merion changed its position entirely and presented in Redistricting Plan Three a 3-1-1 model.

55. The Third Redistricting Plan achieved changes at the high school level using the aforementioned 3-1-1 model. Under the Third Redistricting Plan, all children attending Belmont Hills Elementary School and Gladwyne Elementary School would attend Welsh Valley Middle School, and then Harriton High School. Those children attending Penn Valley Elementary School would all attend Welsh Valley Middle School. Those children attending Penn Valley Elementary School that lived in the abbreviated Lower Merion High School Walk Zone could choose to attend either Lower Merion High School or Harriton High School. All other children attending Penn Valley Elementary School would attend Harriton High School. All children attending Penn Wynne Elementary School, Cynwyd Elementary School, and Merion Elementary School, would attend Bala Cynwyd Middle School, and then Lower Merion High School.⁴

56. Lower Merion once again prominently displayed its “more diverse” high school student populations during the course of its slide show presentation on its Third Redistricting Plan. A true and correct copy of the relevant portion of the slide show is appended hereto as Exhibit “E.”

⁴ The proposed map for the Third Redistricting Plan is included in materials that can be accessed via the internet at http://www.lmsd.org/documents/redistricting/081124_presentation.pdf.

57. Public comment was then permitted on the Third Redistricting Plan.

58. In a letter dated December 12, 2008, the undersigned counsel on behalf of Concerned Ardmore Parents faxed a letter to the Superintendent of Lower Merion advising him that the Third Redistricting Plan was illegal in the light of the United States Supreme Court's holding in Parents Involved in Community Schools v. Seattle School District No. 1, 127 S.Ct. 2738 (2007), among other reasons.

59. Thereafter, Lower Merion presented its Third Redistricting Plan Revised at the Lower Merion School Board Meeting on December 15, 2008.

60. Like the previous plans, the Third Redistricting Plan Revised once again drastically changed the racial make-up of Lower Merion High School and Harriton High School. Like the Third Redistricting Plan, the Third Redistricting Plan Revised changed the school placements for Students Doe in that they no longer had a choice to attend Lower Merion High School or Harriton High School. Under the Third Redistricting Plan Revised, Students Doe had to attend Harriton High School.

61. The Third Redistricting Plan Revised once again achieved changes at the high school level using the aforementioned 3-1-1 model. The difference between the Third Redistricting Plan and the Third Redistricting Plan Revised is that the revised plan restored choice of high school to the Belmont Hills Elementary students and Penn Valley Elementary students in the historic Lower Merion High School Walk Zone, restored choice to any student attending Merion Elementary School, Penn Wynne Elementary School, and Bala Cynwyd Elementary School, and it promised the creation of an

additional program at Harriton High School to lure prospective students assigned to Lower Merion High School to seek enrollment at Harriton High School.⁵

62. Interestingly, for the first time since presentations started regarding redistricting plans, Lower Merion did **not** present any information regarding its “more diverse” high school student populations during the course of its presentation regarding its Third Redistricting Plan Revised.

63. Furthermore, in an October 31, 2008, Memorandum to the Lower Merion School Board, the Superintendent of Lower Merion acknowledged that use of a 3-1-1 model could create “a racially isolated group of African American Students at Harriton.” This is in fact what is going to happen in September 2009. True and correct copies of the relevant pages of the aforementioned Memorandum obtained pursuant to a Pennsylvania Right to Know Request are appended hereto as Exhibit “F.”

64. Public comment was then permitted on the Third Redistricting Plan Revised.

65. In a letter dated January 9, 2009, the undersigned counsel on behalf of Concerned Ardmore Parents faxed another letter to counsel for Lower Merion once again advising that the Third Redistricting Plan Revised was illegal in the light of the United States Supreme Court’s holding in Parents Involved in Community Schools v. Seattle School District No. 1, 127 S.Ct. 2738 (2007), among other reasons, and that Lower Merion could avoid the present litigation if it sought to increase diversity at Harriton High School through legal means, rather than through mandatory, illegal busing.

66. On January 12, 2009, Lower Merion conducted a School Board Meeting during which the Lower Merion School Board deliberated on the Third Redistricting Plan

⁵ The proposed map for the Third Redistricting Plan Revised can be accessed via the internet at http://www.lmsd.org/documents/redistricting/081216_plan3.pdf.

Revised, and then voted to accept said plan. Two (2) of the School Members voted against the plan.

67. Having put Lower Merion on ample notice of their legal objections during the course of the redistricting process, Students Doe find themselves with no other recourse at this time to combat the clearly unconstitutional, illegal, and improper redistricting plan adopted by Lower Merion than to take the present legal action.

Count I

Violation of the Fourteenth Amendment to the United States Constitution

68. Students Doe incorporate herein by reference paragraphs 1 through 67 of this Complaint as if set forth herein at length.

69. The Fourteenth Amendment to the United States Constitution bars state action that discriminates on the basis of race.

70. Redistricting Plan Three Revised violates the Fourteenth Amendment to the United States Constitution in that it discriminates against Students Doe on the basis of race by mandating that said students attend Harriton High School because they are minorities.

71. Redistricting Plan Three Revised also violates the Fourteenth Amendment to the United States Constitution in that it imposes an undue burden on minority students.

72. Pursuant to 42 U.S.C. Section 1983, a private citizen may bring a private cause of action against any “person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws....”

WHEREFORE, Students Doe respectfully request that this Honorable Court grant them the following relief:

(1). Temporarily enjoin the imposition of Redistricting Plan Three Revised as it relates to them, and restore their option to attend either Lower Merion High School or Harriton High School, until a full and proper hearing on this matter can be conducted;

(2). Permanently enjoin the imposition of Redistricting Plan Three Revised as it relates to them following a full and proper hearing on this matter, and restore their option to attend either Lower Merion High School or Harriton High School; and

(3). Award them attorneys' fees, costs, and expert fees in accordance with 42 U.S.C. Section 1988.

Count II
Violation of 42 U.S.C. Section 1981

73. Students Doe incorporate herein by reference paragraphs 1 through 67 of this Complaint as if set forth herein at length.

74. 42 U.S.C. Section 1981 bars state action that discriminates on the basis of race.

75. Redistricting Plan Three Revised violates 42 U.S.C. Section 1981 in that it discriminates against Students Doe on the basis of race by mandating that said students attend Harriton High School because they are minorities.

76. Redistricting Plan Three Revised also violates 42 U.S.C. Section 1981 in that it imposes an undue burden on minority students.

77. Pursuant to 42 U.S.C. Section 1983, a private citizen may bring a private cause of action against any "person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia,

subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws....”

WHEREFORE, Students Doe respectfully request that this Honorable Court grant them the following relief:

(1). Temporarily enjoin the imposition of Redistricting Plan Three Revised as it relates to them, and restore their option to attend either Lower Merion High School or Harriton High School, until a full and proper hearing on this matter can be conducted;

(2). Permanently enjoin the imposition of Redistricting Plan Three Revised as it relates to them following a full and proper hearing on this matter, and restore their option to attend either Lower Merion High School or Harriton High School; and

(3). Award them attorneys’ fees, costs, and expert fees in accordance with 42 U.S.C. Section 1988.

Count III
Violation of 42 U.S.C. Section 2000d et. seq.

78. Students Doe incorporate herein by reference paragraphs 1 through 67 of this Complaint as if set forth herein at length.

79. Under Title VI of the Civil Rights Act, 42 U.S. C. Section 2000d et. seq., “No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”

80. For purposes of Title VI, “program or activity” means all of the operations of “a local educational agency..., system of vocational education, or other school system....” 42 U.S.C. Section 2000d-4a(2)(B).

81. The actions of Lower Merion are governed by Title VI of the Civil Rights Act in that it is operating a school system that receives Federal Funds.

82. Lower Merion's Redistricting Plan Three Revised violates Title VI of the Civil Rights Act in that it discriminates against Students Doe on the basis of race by mandating that said students attend Harriton High School because they are minorities.

83. Redistricting Plan Three Revised also violates Title VI of the Civil Rights Act in that it imposes an undue burden on minority students.

84. A civil action may be brought against Lower Merion pursuant to 42 U.S.C. Section 2000d-7.

85. Pursuant to 42 U.S.C. Section 1983, a private citizen may bring a private cause of action against any "person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws...."

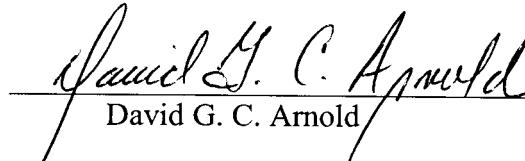
WHEREFORE, Students Doe respectfully request that this Honorable Court grant them the following relief:

(1). Temporarily enjoin the imposition of Redistricting Plan Three Revised as it relates to them, and restore their option to attend either Lower Merion High School or Harriton High School, until a full and proper hearing on this matter can be conducted;

(2). Permanently enjoin the imposition of Redistricting Plan Three Revised as it relates to them following a full and proper hearing on this matter, and restore their option to attend either Lower Merion High School or Harriton High School; and

(3). Award them attorneys' fees, costs, and expert fees in accordance with 42 U.S.C. Section 1988.

Respectfully submitted,

 (DA1299)
David G. C. Arnold

Pennsylvania Attorney Identification No. 49819

Suite 109, Royal Plaza
915 Montgomery Avenue
Narberth, Pennsylvania 19072
(484) 562-0008

Attorney for Plaintiffs

Dated: May 14, 2009